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vided by relatives or friends or estate of the mentally ill person,

E. The Clerk must furnish them.

The Judge of the Circuit or Superior Court:

If it appears upon the examination of such person that there is danger to the community in permitting such person to remain at large, the Judge must make an order for safekeeping of the person, either by commitment to the county jail or some other place of detention determined by the Judge.

(The Judge *may* order the person confined in the county or city jail or lock-up if the Judge believes that his mental condition might cause him to perform acts harmful to his own life or to the life of others; and the Judge *may* order the person temporarily placed in the county home, pending admission to the psychiatric hospital, but such temporary placement cannot exceed thirty (30) days without further order of the court.)

OFFICIAL OPINION NO. 39

August 17, 1961

Mr. Mark D. Miltenberger, Chairman
Indiana Real Estate Commission
1022 State Office Building
100 N. Senate Avenue
Indianapolis, Indiana

Dear Mr. Miltenberger:

This is in answer to your request for an Official Opinion concerning the Acts of 1949, Ch. 44, and particularly the provisions thereof concerning the licensing of real estate brokers and salesmen. As stated in your letter, the question is as follows:

“Basically the question concerned is whether a non-licensed person can sell such real estate located outside of the State of Indiana to Indiana residents, and a broker licensed in Indiana can employ non-licensed

persons to sell such real estate which is located outside the State of Indiana without being in violation of the real estate license law.”

The Acts of 1949, Ch. 44, Sec. 7, as found in Burns’ (1951 Repl.), Section 63-2407, makes it unlawful for any person, firm, partnership, association or corporation to act as a real estate broker or real estate salesman without having first procured a license issued by the Indiana Real Estate Commission and to have kept the same unrevoked after issuance. Upon conviction, a fine of from \$50.00 to \$1,000.00 may be imposed, to which shall be added the amount of any real estate commission paid or earned on such violation. In addition to such remedy for the criminal prosecution of such offenders, the remedy of injunctive relief is found in Section 17 of said Act, being Burns’ (1951 Repl.), Section 63-2417.

Section 9 of said Act, as found in Burns’ (1951 Repl.), Section 63-2409, states as follows in regard to who must obtain real estate licenses:

“A single act performed for a commission or compensation of any kind, in the buying, selling, exchanging, leasing or renting of real estate or in negotiating therefor for others shall constitute the person performing any of such acts, a real estate broker or real estate salesman and shall require the license herein prescribed and the same to be renewed as herein prescribed and in no wise revoked or canceled by the commission. Every person acting for himself, every member of a firm, partnership, association or corporation participating or engaged in the real estate brokerage or as a real estate salesman therefor shall obtain and keep renewed and wholly unrevoked a license as a real estate broker or real estate salesman as herein required.”

Section 22 of said Act as found in Burns’ (1951 Repl.), Section 63-2422, states the following in regard to the term “real estate”:

“The term ‘real estate’ and ‘owner of real estate’ shall include all oil rights and interests in Real Estate and including leaseholds, oil leases, oil royalties and all other conveyances of oil or mineral rights * * *.”

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There is no definition of "real estate" as such, but references are made throughout the applicable real estate license laws to "any real estate." In light of the basic purpose of the real estate licensing laws and the legislative omission of a specific or restrictive definition of the term "real estate," it is apparent that said term should carry its ordinary meaning without any restriction as to the location of real estate being implied.

2 R. S. 1852, Ch. 17, Sec. 1, as found in Burns' (1946 Repl.), Section 1-201, states in part the following in this respect:

"The construction of all statutes of this state shall be by the following rules, unless such construction be plainly repugnant to the intent of the legislature or of the context of the same statute:

"First. Words and phrases shall be taken in their plain, or ordinary and usual, sense. But technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import."

To conclude that the term "real estate" as used in the real estate licensing laws includes only real estate located in the State of Indiana would in my opinion "be plainly repugnant to the intent of the legislature."

In *Frankel v. Allied Mills, Inc.* (1938), 369 Ill. 578, 17 N. E. (2d) 570, where a New York real estate licensing law similar to ours was under consideration, the Supreme Court of Illinois expressed succinctly the purpose of real estate licensing laws in the following language:

"* * * The object of the statute is to promote the public welfare by permitting only persons with the necessary qualifications to act as real estate brokers and salesmen. The location of the land outside the State of New York does not affect the policy of the statute, since it is the vendor and the purchaser who are sought to be protected * * *."

In my opinion the object of the statute obviates the necessity of a definition of real estate, the location thereof being immaterial to the question of licensing.

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Therefore, in light of the licensing requirements of Burns' 63-2409, *supra*, a non-licensed person could not sell real estate located outside of the State of Indiana to Indiana residents and a broker licensed in Indiana could not employ non-licensed salesmen to sell such real estate without being in violation of the real estate licensing laws of Indiana.

OFFICIAL OPINION NO. 40

August 22, 1961

Mr. Richard L. Worley, Chairman
State Board of Tax Commissioners
201 State Office Building
Indianapolis 4, Indiana

Dear Mr. Worley:

This is in response to your request for my Official Opinion in answer to the problem presented by your letter of July 26, 1961, which reads as follows:

“In Section 19, Chapter 345, Acts of 1961, it is provided that ‘Chapter 384 of the Acts of 1959 is hereby expressly repealed as of the effective date of this Act.’

“Your official opinion is respectfully requested on the following question:

“Will the action now pending in the courts to test the constitutionality of the excise tax imposed by Chapter 345, Acts of 1961, have any effect upon the repeal of Chapter 384 of the Acts of 1959? In other words, is Chapter 384 of the Acts of 1959 expressly repealed as of the effective date of Chapter 345 irrespective of the decision which might be rendered by the court?”

As indicated in your letter, there is now pending on appeal to the Indiana Supreme Court an action questioning the validity of the Acts of 1961, Ch. 345, as found in Burns' (1961 Supp.), Section 47-3201 *et seq.*, said action having been commenced in the Superior Court of Marion County, Room No. 3 and being entitled Fred J. Wright *et al.*, plaintiffs v. Edwin